IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2170 OF 1990

Shri Sadguru Sant Sena Maharaj
Trust, through its Chief Trustee;
Shri Rangnath Ramchandra Gavali,
deceased, hence through other Trustees:

a) Digambar Ambadas Waghmare,
Aged 56,

b) Dadaso Raghunath Gavali,
Aged 35,

c) Lalasaheb Gujaji Ingle,
aged 45,

All Residents of Village Vairag,
Tal.Barshi, District Solapur ...Petitioners

Versus

1) Shri Shivajirao Yadav Jagtap,
residing at Village Vairag,
Taluka Barsi, District Solapur.

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Mr.B.K.Raje for Petitioners.

Mr.P.M.Mengane for Respondent No.1.

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**CORAM: A.M.KHANWILKAR, J.**

**JULY 21, 2004.**

**ORAL JUDGMENT :**

1. Leave to amend to correct the cause title.

Amendment be carried out forthwith.

2. This Petition, in essence, questions the correctness of the decision passed by the Additional Tahsildar and A.L.T., Barsi dated May 30, 1986 in Tenancy Case No.57/86. The said case was instituted by Respondent No.1 under Section 32-O of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') in relation to property bearing Gat No.144 of Village Vairag, Taluka Barsi, District Sholapur. That application was filed by the Respondent No.1 on the assertion that he was inducted in the suit land as tenant by Indirabai @ Indumati daughter of Balwant Bhoirkar, who was the brother of Harnabai, the original landlady in respect of the suit land. It was the case of the Respondent No.1 that the said Indirabai @ Indumati became owner of the suit land after the death of Harnabai, who had bequeathed the same in favour of Indirabai @ Indumati by a Will dated 15th April 1962 and since she was the owner and having inducted the Respondent No.1 as tenant, he was entitled to be declared as deemed purchaser. The Tahsildar, by order dated May 30, 1986,

accepted the said stand and proceeded to determine the purchase price in respect of the suit land and declared the Respondent No.1 to be deemed purchaser thereof. It is relevant to note that the said case was filed against Smt.Shakuntala Balwant Bhoirkar namely the mother of Indirabai @ Indumati. Against the said decision, Petitioner filed appeal before the Assistant Collector, Sholapur, which was, however, rejected by order dated February 27, 1987 on the sole ground that the mutation entry No.346 indicated that Shakuntala Balwant Bhoirkar was the owner of the suit land and therefore, the Petitioner had no locus standi to file appeal to question the correctness of the decision rendered by the Tahsildar in favour of the Respondent No.1. Against this decision, the Petitioner carried the matter in Revision, which was, however, dismissed for default on March 27, 1989. An application was filed by the Petitioner for restoration of the Revision Application but even that was rejected on February 7, 1990. In the present Petition, the Petitioner has essentially questioned the correctness of the order passed in favour of the Respondent No.1 by the Tenancy Authority. As

mentioned earlier, the Tenancy Authority has non-suited the Petitioner on the sole ground that the Petitioner has no locus standi, as the revenue record would suggest that the owner of the suit land was one Shakuntala Balwant Bhoirkar.

3. To get over this position, it has been placed on record that there has been serious dispute about the execution of Will in favour of Indirabai @ Indumati dated 15th April 1962. Whereas, Harnabai Sakharam Kalanke has died issueless on July 14, 1962 and before that, has executed a Will dated April 29, 1962 creating the Petitioner Trust and bequeathing the suit property to the Trust. It is seen that the said Will is a registered Will. On the basis of that Will, application was made before the Charity Commissioner for registration of the Petitioner Trust. The said proceedings have been decided in favour of the Petitioner Trust by the Deputy Charity Commissioner vide Judgment and Order dated May 25, 1987. Consequent to that order, the Petitioner Trust has been duly registered vide provisions of Bombay Public Trust Act. In other

words, now the record would indicate that Harnabai bequeathed the property which is now settled in favour of the Petitioner Trust, as has been found by the Charity Commissioner in the aforesaid order. If it is so, then obviously the Petitioner Trust will have to be treated as an aggrieved party in respect of the order passed in favour of the Respondent No.1 on the assumption that the suit land was owned by Smt.Shakuntala Balwant Bhoirkar. If it is so, the view taken by the Appellate Authority that the Petitioner Trust has no locus standi to maintain the appeal to question the decision of the Tahsildar passed in favour of Respondent No.1, cannot be sustained and the same will have to be set-aside. As mentioned earlier, the Appellate Authority has not adjudicated any other issue, but non-suited the Petitioner on the sole reason that it has no locus standi, which view, for the reasons recorded above, cannot be sustained.

4. In the circumstances, the appropriate course, to my mind, is to relegate the parties before the Appellate Authority by setting aside the

orders passed by the Appellate Authority as well as the Revisional Authority, and to restore the appeal on the file of the Appellate Authority, to be decided on its own merits, in accordance with law.

5. It needs to be mentioned at this stage that the case of the Respondent No.1 is that in another civil proceedings, it has been held authoritatively by the Civil Court that the Will executed by Harnabai in favour of Indirabai @ Indumati dated 15th April 1962 was a valid Will. On that basis, the Respondent No.1 is contesting the claim of the Petitioner herein that the said Will being in prior point of time, the Petitioner cannot be said to have become owners in respect of the suit land. However, all such contentions will have to be considered by the Appellate Authority before whom the appeal is restored for reconsideration on its own merits, in accordance with law. All questions including the contention that whether the Petitioner or the said Indirabai @ Indumati is the owner of the suit land, will be looked into by the Appellate Authority and if it is found that the Petitioner Trust is the owner of the

suit land, then obviously, the Respondent No.1 cannot claim any right in respect of the suit land because the Respondent No.1 is claiming only through Indirabai @ Indumati and in no other respect.

6. The Appellate Authority shall decide the appeal as expeditiously as possible, preferably within six months from the receipt of writ of this Court.

7. Petition disposed of on the above terms. No order as to costs.

A.M.KHANWILKAR, J.